

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JAMES G. HAYDEN,**

**Petitioner,**

**v.**

**Civil Action No. 2:05cv20**

**WILLIAM HAINES,**

**Respondent.**

**ORDER**

It will be recalled that on May 25, 2006, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, wherein Petitioner raises as grounds that his rights to equal protection of the law were violated by the Parole Board, and that his right to be free from cruel and unusual punishment was violated upon denial of parole, and raised by Respondent in his Motion to Dismiss, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Respondent's Motion to Dismiss shall be, and the same hereby is, **GRANTED**. It is further

**ORDERED** that James G. Hayden's Petition in this matter be, and the same hereby is, **DISMISSED WITHOUT PREJUDICE** to the Petitioner's right to renew the same following the exhaustion of state remedies, and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Respondent. It is further

**ORDERED** that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4, Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$455.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a), Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** September 21<sup>st</sup>, 2006

/s/ Robert E. Maxwell  
United States District Judge